In the Punjab and Haryana High Court at Chandigarh.

RSA No.1329 of 1985

Date of decision: 17.09.2007.

Smt. Shanti Devi (dead) represented by LR..... Appellant

Versus

Gian Chand ..... Respondent.

CORAM

HON'BLE MR. JUSTICE PERMOD KOHLI.

Present: Mr.D.B. Singh, Advocate, for the appellant.

Mr.C.B. Goel, Advocate, for the responent.

PERMOD KOHLI, J.

This Regular Civil Second Appeal arises out a of a suit for declaration challenging a compromise decree dated 31.08.1979 passed by the learned Sub Judge IInd Class, Jagadhri, in Civil Suit No.203 of 1979, titled Gian Chand Vs. Smt. Shanti. The compromise decree referred to above, has been challenged on the ground of fraud, coercion, mis-representation etc. The learned trial Court vide its judgment and decree dated 07.08.1982, dismissed the suit filed by the plaintiff-appellant. The learned Lower Appellate Court vide its judgment and decree dated 22.02.1985 dismissed the appeal and affirmed the judgment and decree of the learned trial Court.

When the appeal was taken up for hearing, it came to the notice of this Court that the compromise decree challenged in the suit was passed on 31.08.1979 and the suit came to be filed on 06.12.1979. On noticing these dates, I found that the suit itself is not maintainable in view of the specific bar contained in Order 23 Rule 3-A of the Code of Civil Procedure. Learned counsel for the appellant was,accordingly, asked to satisfy the Court regarding the maintainability of the suit as is observed in the order dated 08.08.2007.

The matter has been heard at length.

Learned counsel for the appellant has raised the following questions for consideration in this appeal:-

(1) Whether the High Court can suo-motu raise the question of maintainability of the suit without any objection from the other side, pleadings of the parties and/or issues in the case?

(2) Whether the suit is barred under Order 23 Rule 3-A of the Code of Civil procedure?

(3) Whether the plaint can be returned under Order 7 Rule 10 of the ?Code of Civil Procedure in the event the suit is found to be not maintainable?

(4) Whether the appellant is entitled to seek any other appropriate remedy available to

him under the law?

In view of the above, it is deemed appropriate to answer these questions.

Question No.1.

No doubt, the respondents have not raised any objection regarding the maintainability of the suit. It is also true that the maintainability of the suit is not challenged by the defendant-respondent in the written statement or in any other manner. The learned trial Court proceeded to try the suit and a decree also came to be passed dismissing the suit on merits, but not on the ground of its non-maintainability. Even when the appeal came to be filed before the learned Lower Appellate Court, no such question was ever raised by the defendant-respondent. Obviously, no issue in this regard has been framed in the absence of any pleadings to this effect. Even when this appeal came up for final hearing, the question regarding maintainability of the suit has been raised by the Court and not by the respondents. When the maintainability of any lis before the Court comes to its notice either by the parties to the litigation or of its own, it becomes the duty of the Court to consider the same. I feel that it is the obligation of this Court to apply law notwithstanding whether any such objection is raised by any of the parties to the lis or not. This is particularly so where the question is of the competence of the Court to decide an issue. It is in this view of the matter that the parties were put to notice and asked to argue the question of maintainability of the suit in view of clear and categorical provisions of Order 23 Rule 3-A of the Code of Civil Procedure. I do not subscribe the view of the learned counsel for the appellant that the objection regarding the maintainability of the suit can alone be raised by a party to the lis. It should not be forgotten that when a Court is seized of a

matter, it is its legal and constitutional obligation to consider all relevant factors and questions of law arising in the case irrespective of objections from the parties to the litigation. This rule is particularly applicable where the question relates to jurisdiction and competence of the Court. I am of the considered view that the Court has the jurisdiction and competence to raise the question of maintainability of the suit even in the absence of any plea by the parties concerned. Question No.1 is, accordingly, answered.

Question No.2

From the plaint, it is evident that the suit was instituted to challenge the compromise decree passed in Civil Suit No.203 of 1979, decided on 31.08.1979. Rule 3-A of Order 23 of the Code of Civil Procedure, was inserted by the Code of Civil Procedure (Amendment) Act, 1976, S.74 (with effect from 01.02.1977). This rule creates a bar in institution of a separate suit in respect to the validity of a decree passed on the basis of compromise between the parties. Therefore, when the suit was instituted on 06.12.1979, Rule 3-A of Order 23 of the Code of Civil Procedure had already been brought on the statute book. Even, the decree impugned in the suit was passed after the aforesaid amendment. Rule 3-A of Order 23 of the Code of Civil Procedure reads as under:-

> "3-A. Bar to suit:- No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."

From the reading of Rule 3-A reproduced above, it appears that the very institution of the suit to set aside the compromise decree on the

ground that the compromise was unlawful, is barred. In the present case, the Civil Suit No.527 of 1979 was instituted challenging compromise decree dated 31.08.1979 on the ground that the same has been procured by exercising fraud, coercion, mis-representation etc., meaning thereby that the compromise on which the decree is based, was unlawful. In terms of explanation to Rule 3 of Order 23 of the Code of Cviil Procedure, an agreement or compromise, which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful within the meaning of this rule. Its natural corollary is, if any compromise is entered into between the parties, it must satisfy the requirements of a valid contract. Fraud, coercion, mis-representation etc. vitiate the transaction and, thus, the contract entered into between the parties ceases to be a lawful. It is settled proposition that a compromise is a contract/agreement between the parties. When it is presented in the Court, in any suit or proceedings and the Court is called upon to accept the compromise and pass consequential order, the Court merely takes on record the agreement of the parties and satisfies itself regarding the voluntary nature of such a compromise. If any of the parties later on assails the compromise as invalid on account of exercise of fraud, coercion, misrepresentation etc. and pleads that the compromise/agreement was unlawful and involuntary, such a compromise cannot be challenged by a separate suit in view of the clear Bar created by Rule 3-A of Order 23 of the Code of Civil Procedure. Therefore, the suit filed by the present appellant-plaintiff on 06.12.1979, after insertion of Rule 3-A in Order 23 of the C.P.C., was not maintainable. The Hon'ble Supreme Court in the case of Banwari Lal Vs. Chando Devi (Smt.) (through LRs) and another, (1993) 1 Supreme Court Cases, 581, while dealing with this question, observed as under:-

> "After the amendments which have been introduced, neither an appeal against the order recording the compromise nor remedy by way of filing a suit is available in cases covered by Rule 3-A of order 23. As such a right has been given under Rule 1-A (2) of Order 43 to a party, who challenges the recording of the compromise, to question the validity thereof while preferring an appeal against the decree."

This view is further reiterated by the Apex Court in Pushpa Devi Bhagat (D) Th. LR. Smt.Sadhna Rai Vs. Rajinder Singh & Ors., 2006 (3) Civ. C.C., 540, wherein paragraph 12 of the judgment, it is observed as under:-

> "12. The position that emerges from the amended provisions of Order 23, can be summed up thus:-
>
> (i) .....
>
> (ii) .....
>
> (iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.
>
> (iv) .....
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> Therefore, the only remedy available to a party to a consent decree to avoid such

consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree, is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21.8.2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27.8.2001), filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal

by second defendant was not maintainable, having regard to the express bar contained in Section 96 (3) of the Code."

In view of the above position, the suit filed by the present appellant is itself not maintainable and is liable to be dismissed and consequently the appeal. This question is answered accordingly.

Question No.3.

Learned counsel for the appellant submits that in the event the suit found to be not maintainable, then the plaint be returned to the appellant for presentation before the competent Court i.e. the Court which passed the compromise decree on 31.08.1979. Rule 10 of Order 7 of the Code of Civil Procedure, deals with the return of the plaint and reads as follows:-

"10. Return of plaint:

(1) (Subject to the provisions of rule 10-A, the plaint shall) at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

(Explanation: For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint, under this sub-rule).

This rule has the application where the Court in which the

suit/plaint is filed,is of the opinion that the suit should have been filed in another Court. It pre-supposes that the plaint is to be instituted in another Court of competent jurisdiction, explanation appended to the Rule 11 of Order 7 of the Code of Civil Procedure, empowers an appellate/revisional Court to return the plaint even after setting aside the decree passed in a suit. In the present case, the question of return of plaint does not arise as a separate suit itself is not maintainable whether in the same Court or in any another Court. What is barred is a "separate suit" in every Court and not a suit in a particular Court i.e. the Court passing the compromise decree. Learned counsel for the appellant has relied upon R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd., AIR, 1993, Supreme Court, 2094. In this case, a summary suit for recovery was filed on the original civil jurisdiction of the Bombay High Court. The defendant raised an objection in the written statement that the suit is triable by the Court at Anand in view of the endorsement made in the Fixed Deposit Receipts, which is the basis of the suit. It was, accordingly, pleaded that the Bombay High Court has no jurisdiction to entertain the suit. Learned Single Judge of the Bombay High Court rejected the contention. A Division Bench of the same High Court, however, held that the said Court has no jurisdiction to entertain and try the suit and dismissed the same. A prayer came to be made on behalf of the plaintiff for amendment of the plaint, which was also rejected. In an appeal preferred before the Apex Court, the following observations were made in paragraph 7 of the judgment:-

> ".....The Division Bench was totally wrong in passing an order of dismissal of suit itself when it had arrived to

> the conclusion that the Bombay Court had no jurisdiction to try the suit. The only course to be adopted in such circumstances was to return the plaint for presentation to the proper Court and not to dismiss the suit."

This judgment has no application to the facts of the present case.

Further reference is made to a judgment of a Coordinate Bench of this Court in the case of Varinder Singh Vs. Baljit Singh and others, (2007-1) The Punjab Law Reporter,776. In this case, the suit was dismissed as withdrawn on the statement of the parties that they have entered into a compromise out side the Court. Later on, an appeal was preferred challenging the order of dismissal on the ground that the compromise has been procured by exercising fraud and lack of authority of the party to withdraw the suit. A question was raised regarding the competence of the appeal before the High Court. This Court, while considering the plea, made observations in paragraph 23 of the judgment, which are as under:-

> "23. Since, Baljit Singh had filed the appeal against the order dated July 16, 1986, on August 26, 1986 itself and the matter has remained pending thereafter, earlier before the appellate court and thereafter before this Court, it is now directed that if Baljit Singh choose to file an application before the learned trial Judge within a period of 30

days from the date of receipt of the copy of its order, the said application shall be treated to have been filed within limitation.

Suffice it to say that these observations were made in a different context and not in the light of the provisions of Order 43 Rule 1-A of the Code of Civil Procedure which, inter-alia, empowers the Appellate Court to examine whether a compromise has been duly recorded or the Court has failed to record a compromise. It does not deal with a situation, where a separate suit is filed to challenge a compromise decree. Even this judgment does not come to the rescue of the appellant-plaintiff. It is not a question of territorial or pecuniary jurisdiction, which may attract Order 7 Rule 10 of the Code of Civil Procedure and the Court may be called upon to return the plaint. It is a question of inherent jurisdiction of the Civil Court in entertaining a separate suit to challenge a compromise decree. The Court lacks inherent jurisdiction to entertain a lis and Order 7 Rule 10 of the C.P.C. cannot be applied. The contention of the learned counsel for the appellant-plaintiff is, thus, rejected and the question is answered accordingly.

Question No.4

It is lastly contended that the plaintiff may be permitted to approach the Court, which recorded the compromise in view of the observations of the Apex Court in Banwari Lal's case (supra). The said judgment deals with a question whether the enquiry should be made in a separate suit or by the same Court, which passed the compromise decree. In so far as the answer to this question is concerned, it has been held in the said judgment that it is only the Court, passing the decree on

compromise, which is competent to deal with the same, where the compromise is questioned. In view of the aforesaid observations, the right of the appellant-plaintiff to approach the said Court cannot be disputed. However, in the present case, the appellant-plaintiff contested the suit and earned judgment on merits against her. Both the learned Courts below have decided against her on merits. However, in the present Regular Second Appeal, I refrain myself in expressing any opinion on the merits of the controversy involved i.e. the validity of the impugned judgments and decrees, as the plaintiff-appellant has been non-suited purely on a legal question. It is for the appellant-plaintiff to seek any appropriate remedy available to her under the law if there is no legal impediment and it is for the concerned Court/Authority/Forum to consider the effect of judgments and decrees of the learned Courts below. This question is answered accordingly.

In view of my above findings to the effect that the suit itself is not maintainable, the suit filed by the plaintiff is dismissed as barred under Order 23 Rule 3-A of the Code of Civil Procedure and consequentially, present appeal is dismissed being infructuous with no order as to costs.

(PERMOD KOHLI)
JUDGE

September 17, 2007.
BLS

Note: Whether to be referred to the Reporter: YES